

REMARKS

After entry of this amendment, claims 1, 3-11, and 13-24 are pending. In the present Office Action, claims 1-24 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Cabrera et al., U.S. Patent No. 6,535,998 ("Cabrera") in view of Microsoft Windows XP Registry Guide ("XP Registry"). Applicant respectfully traverses this rejection and requests reconsideration.

Claims 1, 3-11, and 13-18

Applicant respectfully submits that claims 1, 3-11, and 13-18 recite combinations of features not taught or suggested in the cited art. For example, claim 1 recites a combination of features including: "merge the first instance and the second instance of the database to generate a third instance, wherein the third instance comprises: (i) each of the one or more second keys from the second instance whose preservation is not overridden by the third key; and (ii) each of the one or more second keys from the first instance whose preservation is overridden by the third key; wherein the third instance comprises at least one second key from the first instance and a least one second key from the second instance."

With regard to claim 2, the Office Action asserts that Cabrera teaches the merging of the first instance and the second instance to generate the third instance, citing col. 13, lines 48-63. See Office Action, page 7, last paragraph. Applicant respectfully disagrees. Cabrera teaches: "If differences exist, step 1204 is performed to determine if a critical device is not present on the new system. For example, a floppy drive or CD-ROM may have the sif file thereon, and thus such a device is needed to restore the system. If no critical device is missing, step 1204 branches to step 1212 as described below. However, it is also possible that a critical device is missing, but an adequate substitute is available. For example, different floppy drives may read floppy disks, DVD-ROM drives may read CD-ROMS and so on. Thus, if missing, step 1204 branches to step 1206 to determine if such an adequate substitute exists. If no substitute exists, step 1210 is performed to inform the operator of the inability to restore the system. On the other hand, if an adequate substitute exists, step 1208 merges (substitutes) the hardware by allowing the

actual state to be used instead of the state recorded in the sif file. Essentially, this involves preserving the original device information that was saved during the ASR restore, while enabling the use of different devices that ASR might have detected (step 1212). " (Cabrera, col. 13, lines 48-65).

Accordingly, Cabrera teaches that, if substitute hardware exists in the current system for a critical device, that substitute hardware is preserved in the registry. Additionally, if there is new hardware in the current system, that new hardware is also included (preserved) in the registry. It is important to note that both the substitute hardware and the new hardware are part of the current system. Accordingly, any data in the registry related to either the substitute hardware and the new hardware must come from the current system, not the backup being restored in Cabrera.

Claim 1 recites **the opposite of Cabrera**: "if the computer system's hardware is equivalent to hardware of a source of the backup data, process a third key, wherein the third key overrides a preservation of at least one of the one or more second keys from the second instance [on the computer system]...and ... each of the one or more second keys from the first instance [in the backup data] whose preservation is overridden by the third key [is merged into the database]." That is, **if there is equivalent hardware in claim 1, some of the second keys are restored to the database from the backup instance of the database**. Cabrera's use of only data from the current system for new hardware and equivalent hardware does not teach or suggest these features of claim 1.

Applicant also notes that the assertions with regard to the merging features are inconsistent with the assertions made for other claim features. Specifically, the Office Action asserts that "if the computer system's hardware is equivalent to hardware of a source of the backup data, process a third key, wherein the third key overrides a preservation of at least one of the one or more second keys" is taught by Cabrera at col. 13, lines 42-47. This section of Cabrera teaches that, at step 1200, a test is performed to determine if the new system is identical to the former system and, if so, the step 1202 is performed to restore the system as it was backed up. See Fig. 12, right side. However, if

this is the case, then Cabrera's system would not perform the merge. Step 1202 exits the process without reaching the merging operation on the left side of Fig. 12. Accordingly, if steps 1200 and 1202 are alleged to teach the processing of the third key, it is inconsistent to then assert that the merging features are taught at col. 13, lines 48-63, since the merging features are dependent on processing the third key: "merge the first instance and the second instance of the database to generate a third instance, wherein the third instance comprises: (i) each of the one or more second keys from the second instance whose preservation is not overridden by the third key; and (ii) each of the one or more second keys from the first instance whose preservation is is overridden by the third key." To further clarify, Applicant has added that "the third instance comprises at least one second key from the first instance and a least one second key from the second instance." Accordingly, bypassing the merging operation on the left side of Cabrera's Fig. 12 to process the third key, as alleged, would not result in the third instance having keys from both the first instance and the second instance.

Additionally, claim 1 recites a combination of features including: "process one or more first keys of the second instance [of the database]...identifying one or more second keys of the second instance...to be preserved in the database subsequent to the restore operation... if the computer system's hardware is equivalent to hardware of a source of the backup data, process a third key, wherein the third key overrides a preservation."

The Office Action asserts that Cabrera teaches the above highlighted features, citing 23-47. See Office Action, page 3, bottom and page 4. Applicant respectfully disagrees for at least the reasons noted above. The Office Action states that Cabrera does not teach keys as defined in claim 1, but cites XP Registry to allegedly teach that keys were well known. Applicant disagrees that the existence of keys in a reference proves the keys are "well known." Nevertheless, XP Registry teaches only two keys, as noted by the Office Action: "a FilesNotToBackup" key that is used only to cause the backup utility to skip files during a backup; and a "KeysNotToRestore" key that lists keys not to be restored to a computer during a restore. Accordingly, only one key is used during backup, and only one key is used in restore. Specifically, the "KeysNotToRestore" key is

used during a restore and specifies keys not to be restored from the backup (i.e. keys to be preserved on the current system. To the contrary, claim 1 recites a key that overrides the preservation specified by another key during a restore. Accordingly, even though XP Registry teaches a key related to the restore of a backup, there is no teaching of one key overriding the preservation specified by another key. Since the combination of Cabrera and XP Registry does teach or suggest all of the features of claim 1 (for at least the reasons highlighted above), Cabrera and XP Registry fail to form a *prima facie* case of obviousness of claim 1.

Accordingly, Applicant respectfully submits that claim 1 is patentable over Cabrera. Claim 11 recites a combination of features including features similar to those highlighted above. Thus, claim 11 is patentable over Cabrera as well. Claims 3-10 (dependent from claim 1) and claims 13-18 (dependent from claim 11) recite additional combinations of features not taught or suggested in the cited art.

Claims 19-24

Claim 19 recites a combination of features including: "if the computer system's hardware is equivalent to hardware of a source of the backup data, process a third key, wherein the third key takes precedence over the one or more first keys if a conflict exists between the one or more first keys and the third key, and wherein each second key for which the conflict exists is restored from the first instance instead of preserved from the second instance and each second key for which no conflict exists is restored from the second instance, wherein each key of a given instance of the database is an identifier used to access information in the given instance."

The Office Action relies on the same teachings of Cabrera and XP Registry, highlighted above with regard to claim 1, to allegedly teach the features of claim 19. Applicant respectfully disagrees. As noted above, XP Registry teaches only one key that can be used during a restore: "KeysNotToRestore." The FilesNotToBackup key is only used during backup, and has no impact on the restore operation. Because there is only

one key for restore operation, there can be no conflict between one or more first keys and the third key, as highlighted above.

Furthermore, Cabrera does not teach or suggest that there are any conflicts during his restore operation. As noted above, new devices are merged into the registry from the current system and substitute devices from the new system can also be merged in the registry. However, the new devices and the substitute devices do not conflict with each other, nor do they conflict with anything in the registry.

Because the combination of Cabrera and XP Registry does teach or suggest all of the features of claim 1, Cabrera and XP Registry fail to form a *prima facie* case of obviousness of claim 19. Accordingly, claim 19 is patentable over the cited art for at least the above stated reasons. Claims 20-24 depend from claim 19 and recite additional combinations of features not taught or suggested in the cited art.

CONCLUSION

Applicant submits that the application is in condition for allowance, and an early notice to that effect is requested.

If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5760-21800/LJM.

Respectfully submitted,

/Lawrence J. Merkel/

Lawrence J. Merkel, Reg. No. 41,191
AGENT FOR APPLICANT(S)

Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C.
P.O. Box 398
Austin, TX 78767-0398
Phone: (512) 853-8800

Date: September 29, 2008